

K8Q6RIVC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19CR761 (JPO)

5 CARLOS RIVERA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 August 26, 2020
11:25 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 Acting United States Attorney for the
Southern District of New York

17 JAMIE E. BAGLIEBTER

Assistant United States Attorney

18 DANIEL A. MCGUINNESS

19 Attorney for Defendant

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(Case called; videoconference)

THE DEPUTY CLERK: In matter of United States v.
Carlos Rivera.

Government, please state your name for the record.

MS. BAGLIEBTER: Good morning, your Honor. Jamie
Bagliebter for the government.

THE COURT: Good morning.

MR. McGUINNESS: For Mr. Rivera, Daniel McGuinness.
Good morning, your Honor.

THE COURT: Good morning.

Anyone else?

This is Judge Oetken. I have the video and audio and
can see and hear the parties. I believe first we have to cover
the arraignment on the Superseding Indictment S3, which was
filed on July 21st.

Mr. McGuinness, do you know if your client has seen a
copy of the superseding indictment?

MR. McGUINNESS: Yes, your Honor.

THE COURT: Ms. Bagliebter, I know that S3 adds a
defendant. Does it change anything else in the counts against
Mr. Rivera?

MS. BAGLIEBTER: No, your Honor.

THE COURT: All right. Thank you.

Mr. Rivera, have you seen a copy of the superseding
indictment, S3, the newest one?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you waive public reading of the
3 indictment at this time?

4 THE DEFENDANT: What does that mean?

5 THE COURT: You have a right for me to read the entire
6 thing, or do you waive that right?

7 THE DEFENDANT: Yeah. I waive that right.

8 THE COURT: Do you understand the charges against you?

9 THE DEFENDANT: Yes.

10 THE COURT: Normally I would ask for your plea of
11 guilty or not guilty. We'll get to the guilty plea later.

12 For now do you plead not guilty?

13 THE DEFENDANT: Yeah.

14 THE COURT: I will enter a plea of not guilty and then
15 we'll go through the change of plea pursuant to the plea
16 agreement.

17 Mr. McGuinness, I have been informed your client
18 wishes to change his plea to guilty pursuant to a plea
19 agreement; is that correct.

20 MR. MCGUINNESS: Yes, your Honor.

21 THE COURT: Has he had a chance to review the plea
22 agreement and what is the status of the signature of it?

23 MR. MCGUINNESS: We have had a chance to review it.
24 He has not been able to return a signed copy to me. He has
25 indicated to me that he is consenting to the Court signing on

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1 his behalf.

2 THE COURT: We're proceeding by videoconference and
3 doing that is authorized by the Cares Act in light of the
4 COVID-19 pandemic and by Chief McMahon's standing order. I am
5 finding that plea proceedings cannot be conducted in person
6 without seriously jeopardizing public health and safety subject
7 to the defendant's consent.

8 Mr. McGuinness, have you discussed the subject of
9 proceeding by videoconference with the defendant?

10 MR. MCGUINNESS: Yes, we have, your Honor, and he has
11 consented. Yes, your Honor. I have explained to my client
12 that he has right to be present in person and to have his
13 present in person by his side, and he has consented to
14 proceeding by video as we are today.

15 THE COURT: Mr. Rivera; is that correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You are okay with proceedings by video
18 today?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I find the defendant has consulted with
21 the counsel and has knowingly and voluntarily waived his right
22 to an in-person proceeding for a change of plea hearing.

23 I also have to make a finding as to whether the
24 proceeding can or cannot be further delayed without serious
25 harm to the interest of justice. I wonder if you can briefly

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1 address that, Mr. McGuinness.

2 MR. MCGUINNESS: Your Honor, I believe it is in the
3 interest of justice to proceed with this plea so we can
4 expeditiously move to sentencing. Additionally, your Honor, I
5 believe it is important for my client to be designated to a
6 longer term facility as this does include a mandatory minimum
7 sentence, this plea agreement he is agreeing to, so he can have
8 the educational opportunities and other programs in those
9 facilities that are not available where he is.

10 THE COURT: Ms. Bagliebter, anything you would like to
11 add?

12 MS. BAGLIEBTER: Yes, your Honor. In addition to the
13 reasons set forth by the defendant, the government further
14 believes that the plea cannot be further delayed without
15 serious harm to the interest of justice because of the
16 government's ability to move forward with its case of four
17 cooperating witnesses, some of whom we expect to seek a
18 sentence of time-served is dependent on the defendant and the
19 co-defendants moving forward in their cases.

20 THE COURT: Thank you.

21 For all the reasons stated by counsel, I do find that
22 the proceedings cannot and should not be further delayed
23 without serious harm to the interest of justice and therefore
24 proceedings by videoconference is authorized and appropriate.

25 Mr. Rivera, I have been informed you wish to plead

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1 guilty to conspiracy to distribute and possess with intent to
2 distribute narcotics.

3 Is that correct?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Before accepting your plea, I am going to
6 ask you some questions to establish that you are pleading
7 guilty because you are guilty and not for some other reason.
8 If you don't understand any of my questions or if you would
9 like to take a break and speak further to your counsel, just
10 let me know.

11 Will you please raise your right hand, and I am going
12 to swear you in.

13 (Defendant sworn)

14 THE COURT: You are now under oath. And if you answer
15 my questions falsely, you can be prosecuted for perjury.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: What is your full name?

19 THE DEFENDANT: Carlos Rivera. Carlos Alberto Rivera,
20 Jr. That's my whole name.

21 THE COURT: Carlos Alberto Rivera, Jr.?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How old are you?

24 THE DEFENDANT: I am 19. I turn 20 October --

25 THE COURT: October 20 what?

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1 THE DEFENDANT: 25th.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: Like 10th -- 10th grade.

4 THE COURT: Where was that?

5 THE DEFENDANT: I went to two different high schools.

6 I went to Curtis on Staten Island. I went to Lincoln in
7 Brooklyn. I went to Queens Academy in the Bronx. But I didn't
8 really go to Queens. I just went here and there. I didn't
9 really --

10 COURT REPORTER: I am sorry. The defendant said, "I
11 just went here and there," and then I didn't hear the rest.

12 THE DEFENDANT: I went to Curtis in Staten Island, I
13 went to Lincoln in Brooklyn, and I went Queens in the Bronx.

14 THE COURT: Queens?

15 THE DEFENDANT: Yeah. Queens Academy.

16 THE COURT: But then you said I didn't really --
17 something.

18 THE DEFENDANT: Oh, no. I said I wasn't consistent in
19 going to school when I was going to Queens. I was just going
20 here and there.

21 THE COURT: Here and there. Thank you.

22 Have you ever been treated or hospitalized for any
23 mental illness?

24 THE DEFENDANT: No.

25 THE COURT: Are you under the care of a doctor or

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1 psychiatrist?

2 THE DEFENDANT: Like a counselor?

3 THE COURT: Yes. Have you been seeing a psychiatrist
4 or a doctor?

5 THE DEFENDANT: No. I just -- I talk to my counselor
6 when I am here when he gets a chance. That's all.

7 THE COURT: You haven't been diagnosed with any mental
8 condition?

9 THE DEFENDANT: No.

10 THE COURT: Have you ever been hospitalized or treated
11 for addiction to drugs or alcohol?

12 THE DEFENDANT: No.

13 THE COURT: Did you say no?

14 THE DEFENDANT: Yeah. I am sorry. No, I never been
15 hospitalized.

16 THE COURT: In the past 24 hours have you had any
17 drugs or medicine or alcohol?

18 THE DEFENDANT: No.

19 THE COURT: Is your mind clear today? Do you
20 understand what is happening?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. McGuinness, do you have any doubt as
23 to the defendant's competence to plead?

24 MR. McGUINNESS: No, your Honor.

25 THE COURT: Ms. Bagliebter, do you?

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1 MS. BAGLIEBTER: No, your Honor.

2 THE COURT: Based on his responses to my questions and
3 his demeanor as I observe it and from his responses, I find
4 that the defendant is competent to enter a plea of guilty at
5 this time.

6 Mr. Rivera, have you had a sufficient opportunity to
7 discuss your case with your lawyer, including the charge you
8 intend to plead guilty to, any possible defenses, and the
9 consequences of pleading guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you satisfied with your attorney's
12 representation of you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I am now going to explain certain
15 constitutional rights that you have. You will give up certain
16 rights when you plead guilty and I want to make sure you
17 understand them. Under the Constitution and laws of the United
18 States, you have the right to a public trial and a speedy trial
19 by a jury on the charges in the indictment. At that trial you
20 will be presumed innocent and the government would have to
21 prove you guilty beyond a reasonable doubt before you could be
22 found guilty. You would not have to prove your innocence; but
23 a jury of 12 people would have to agree unanimously, all 12 of
24 them, that you are guilty beyond a reasonable doubt. At that
25 trial and at every stage of your case, you would have the right

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1 to be represented by a lawyer. And if you could not afford
2 one, the lawyer would be appointed to represent you.

3 During a trial the witnesses for the government would
4 have to come to court and testify in your presence and your
5 lawyer would be able to cross-examine the witnesses for the
6 government, object to evidence offered by the government, and
7 offer evidence and compel witnesses to testify in your defense.

8 Do you understand all that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: At a trial, although you have the right to
11 testify if you chose to, you would also have the right not to
12 testify and no inference or suggestion of guilt could be drawn
13 from the fact that you did not testify if that is what you
14 chose.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Also, if you were convicted at a trial,
18 you would have the right to appeal that verdict to the Court of
19 Appeals.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Even at this time as you are entering this
23 plea, you do have the right to change your mind and continue
24 pleading not guilty and have a trial.

25 Do you understand?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: But if you do plead guilty and I accept
3 your plea today, there will be no trial. You will give up your
4 right to the trial and the other rights I have described. I
5 will enter a judgment of guilty on the count that you are
6 pleading guilty to and then I will sentence you later on the
7 basis of that guilty plea.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You'll also have to give up your right not
11 to incriminate yourself when you plead guilty because I will
12 ask you about what you did to satisfy myself that you are
13 actually guilty.

14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I would like to ask counsel for the
17 government if you would please state the elements of the
18 offense that the defendant is pleading guilty to.

19 MS. BAGLIEBTER: Yes, your Honor.

20 If the case were to proceed to trial, the government
21 would have to prove the following elements beyond a reasonable
22 doubt, and these are the elements for Count Eighteen of the
23 superseding indictment and he will be pleading guilt to the
24 lesser included offense of that:

25 First, that there was an agreement among two or more

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1 people to violate the narcotics laws by distributing or
2 possessing with the intent to distribute at least 28 grams of
3 mixtures and substances containing a detectable amount of
4 cocaine base commonly referred to as a crack cocaine;

5 Second, that the defendant entered into that agreement
6 knowingly and with the intent to further its objective.

7 The government would also have to prove by a
8 preponderance of the evidence that some portion the crime
9 occurred in the Southern District of New York.

10 THE COURT: Thank you.

11 I also want to explain the maximum penalty for this
12 crime. We will get to the sentencing guidelines in a minute
13 but, under the statute there is a minimum and maximum that I
14 cannot go above or below in determining the appropriate
15 sentence. There is a maximum under the statute of 40 years'
16 imprisonment and there is a mandatory minimum of five years'
17 imprisonment. There is a maximum fine of the greatest of \$5
18 million or two times the total gain from the offense or two
19 times the total loss to other people from this offense and
20 there is a \$100 special assessment.

21 There is also a term of supervised release for up to
22 life with a mandatory minimum of at least four years'
23 supervised release. when I say "supervised release," that
24 essentially is like probation. It means that you are subject
25 to monitoring after your term of incarceration and you have to

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1 comply with any terms and conditions that are set for that
2 period. And if you fail to comply with them, you can be
3 returned to prison without a jury trial.

4 Also, you must admit to the forfeiture allegation in
5 the indictment when you plead guilty and agree to forfeit to
6 the United States any property derived from the proceeds from
7 this crime or used facilitate this crime as explained in the
8 plea agreement.

9 Do you understand all that?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you a United States citizen?

12 THE DEFENDANT: Yes.

13 Yes, sir.

14 THE COURT: If your attorney or anyone has attempted
15 to predict what your sentence is going to be, I want to make it
16 clear that I am the one who is going to decide your sentence.
17 I am not going to do that today, but I will do that at the time
18 of sentencing after receiving the submissions from the parties
19 and a presentence report that the Probation Department will
20 prepare. I will consider any departures or adjustments from
21 the sentencing guideline range. But since I am the one who is
22 going to determine your sentence, if it is different from what
23 you expect or what anyone has predicted, you will still be
24 bound by your guilty plea.

25 Do you understand that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anyone threatened you or forced you to
3 plead guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: The latest version of the plea agreement
6 differs from the one that I have looked at only in that it says
7 S3 instead of S2.

8 Is that right, Ms. Bagliebter?

9 MS. BAGLIEBTER: That's correct, your Honor.

10 THE COURT: What is the cover date on it?

11 MS. BAGLIEBTER: It actually has the same date, which
12 is the July 13th date.

13 THE COURT: Got it.

14 Have you had a chance to look at the plea agreement,
15 to read it, and talk to your counsel about it?

16 THE DEFENDANT: Me?

17 THE COURT: Yes.

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Do you feel you understand everything that
20 is in the plea agreement, what you are agreeing to?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. McGuinness, did you have a chance to
23 go over it with your client?

24 MR. MCGUINNESS: Yes, your Honor.

25 THE COURT: In terms of signing it, Mr. McGuinness,

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1 have you signed the latest one or not?

2 MR. McGUINNESS: I believe I did transmit a signed
3 copy.

4 THE COURT: Okay.

5 MR. McGUINNESS: If not, I can do that immediately.

6 THE COURT: Given that we're doing this remotely,
7 Mr. Rivera, do you authorize me to sign for you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You are okay with my signing for you and
10 you agree to everything in the plea agreement?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there any agreement that has been left
13 out of this agreement? Is there any separate understanding
14 with the government?

15 THE DEFENDANT: No.

16 THE COURT: The sentencing guidelines are advisory,
17 but they are the starting point so I am required to consider
18 them when I decide on a sentence. Under the agreement, there
19 is an agreed upon guideline range of 70 months to 87 months'
20 imprisonment. There is a five-year mandatory minimum, which is
21 the minimum sentence that must be imposed. The agreement of
22 the sentencing guidelines is binding on you and the government,
23 but it is not binding on me and I will make my own calculation
24 of the guidelines. I want to make it clear that you are giving
25 up your right to appeal or challenge your sentence as long as I

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1 sentence you within or below the sentencing guideline range,
2 which that is 87 months or less.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Having gone through these questions, do
6 you still wish to plead guilty under this agreement?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Are you pleading guilty voluntarily and of
9 your own free will?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Would you please tell me what you did that
12 makes you believe you are guilty of this charge.

13 THE DEFENDANT: From about 2017 went to 2019 I agreed
14 with others to possess and distribute --

15 THE COURT: Can you speak really slowly so the court
16 reporter can hear everything.

17 Thank you.

18 THE DEFENDANT: From about 2017 to 2019 I agreed with
19 others to possess and distribute more than 28 grams of crack
20 cocaine in the Bronx, New York.

21 I am deeply sorry for the stuff that I did. I just
22 want to go home and change my life for me and my family.

23 THE COURT: Thank you.

24 At the time that you did this, did you know it was
25 against the law?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Ms. Bagliebter, do you think
3 that is a sufficient factual basis for the plea?

4 MS. BAGLIEBTER: Just a moment, your Honor.
5 Yes, your Honor.

6 THE COURT: Mr. McGuinness, do you agree?

7 MR. MCGUINNESS: Yes, your Honor.

8 THE COURT: Do you know of any reason I should not
9 allow your client to plead guilty?

10 MR. MCGUINNESS: No, your Honor.

11 THE COURT: Mr. Rivera, since you acknowledge that you
12 are in fact guilty as charged and since I am satisfied that you
13 know your rights, including your right to go to trial and that
14 you are aware of the consequences of your plea, including the
15 sentence that may be imposed, I find that you are voluntarily
16 pleading guilty and I accept your guilty plea and enter
17 judgment of guilty on Count Eighteen, specifically the lesser
18 included offense of conspiracy to distribute and possess with
19 intent to distribute 28 grams of mixtures and substances
20 containing cocaine base or crack cocaine as set forth in the
21 plea agreement.

22 I will sign the plea agreement on your behalf as
23 authorized and then I will set a date for sentencing. The
24 sentencing process, as your lawyer will explain, involves a
25 meeting which will probably be a conference call with the

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1 Probation Department. They prepare the presentence report that
2 has a lot of information about this offense but also about you
3 and your family and background. Please make sure everything
4 you do talk about with them is honest and accurate.

5 In terms of timing, the normal sentencing timeline
6 would be about December 8. It's usually between three and four
7 months out.

8 Does that timing work for you? Do you want to ask for
9 a different timetable, Mr. McGuinness?

10 MR. MCGUINNESS: That works for us, your Honor.

11 THE COURT: Is that okay for the government?

12 MS. BAGLIEBTER: Yes, your Honor.

13 THE COURT: All right. I am setting sentencing for
14 Tuesday, December 8th, 2020 at 12:00 noon.

15 Defense submissions will be due November 24th.
16 Written submissions November 24th. The government's
17 submissions are due December 1st.

18 Anything further from the government?

19 MS. BAGLIEBTER: No, your Honor.

20 THE COURT: Anything further from defense?

21 MR. MCGUINNESS: No. Thank you, your Honor.

22 THE COURT: Thank you all very much. We're adjourned.

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25